

# MOTOR VEHICLES

## *Motor Vehicle Repair*

The Wisconsin Department of Agriculture, Trade and Consumer Protection regulates unfair and deceptive business practices. DATCP has adopted a rule to protect consumers in motor vehicle repair transactions. This rule is found in Wisconsin Administrative Code chapter ATCP 132. Violators may be prosecuted and there is a private remedy for consumers.

Among other things, ATCP 132:

- Requires shops to offer repair estimates and document repair transactions.
- Prohibits unfair repair practices, including unauthorized repairs and repair charges that exceed the shop's estimate.
- Requires shops to get customer authorization for additional repairs.
- Prohibits shops from misrepresenting that repairs are necessary.

### Who Is Covered?

ATCP 132 applies to shops engaged in the business of repairing motor vehicles and motor homes (those vehicles and motor homes that must be registered with DOT or an equivalent agency of another state). It does **not** apply to repairs of farm equipment, or to motor vehicles (other than motor homes) that have a gross vehicle weight rating of more than 16,000 lbs.

ATCP 132 applies whenever a shop does any of the following for a customer (other than another shop):

- Diagnoses any defect in a motor vehicle, or in any motor vehicle component, part or attached accessory.
- Installs or removes any component, part or accessory.
- Improves, adjusts, replaces, repairs or services any motor vehicle component or part, regardless of whether that component or part is attached to the motor vehicle at the time of repair.
- Improves, adjusts, replaces, maintains or services any "accessory" (such as a radio, audio system or cellular phone) that is attached to the motor vehicle at the time of repair.

ATCP 132 does **not** apply to any of the following:

- Towing services.
- Supplying motor fuel.
- Washing or waxing a motor vehicle.
- Cleaning the passenger compartment of a motor vehicle.

## Repair Authorization Required

A shop may not perform any repairs that the customer has not authorized. The customer may give the repair authorization in person, by telephone, or by any other form of communication (such as leaving a note with the shop). Before starting any repairs whose price may exceed \$50, the shop must record the repair authorization in writing on a repair order (see below).

## Written Repair Order

Before a shop starts any repairs whose price may exceed \$50, the shop must prepare a written repair order. If there is face-to-face contact between the customer and the shop, the shop must give the customer a copy of the repair order before starting the repairs. The repair order must include all the following:

- The name and address of the shop.
- The name and address of the customer.
- The model, make and license number of the motor vehicle.
- A firm price quotation or estimate for the repairs, if required (see below).
- The estimated repair completion date, if required (see below).
- Notice that the customer is entitled to receive or inspect replaced parts (see below).
- A description of the repairs authorized by the customer.
- The date the repair order is written.
- The signature of a shop representative.

## Written Statement of Estimate Alternatives

If there is face-to-face contact between the customer and the shop, the shop must give the customer either a firm written price quotation or a written statement of estimate alternatives before starting any repairs whose price may exceed \$50. The written statement of estimate alternatives must accompany or be included on the repair order, and must look like this:

**YOU ARE ENTITLED TO A PRICE ESTIMATE FOR THE REPAIRS YOU HAVE AUTHORIZED. THE REPAIR PRICE MAY BE LESS THAN THE ESTIMATE, BUT WILL NOT EXCEED THE ESTIMATE WITHOUT YOUR PERMISSION. YOUR SIGNATURE WILL INDICATE YOUR ESTIMATE SELECTION:**

1. I request an estimate in writing before you begin repairs.

2. Please proceed with repairs, but call me before continuing if the price will exceed \$\_\_\_\_\_.

3. I do not want an estimate.

## **Repair Estimate**

If any of the following occurs, the shop must provide the customer with an oral or written estimate before starting any repairs whose price may exceed \$50:

- The customer signs estimate alternative 1 (see above).
- There is face-to-face contact but the customer fails to sign any of the estimate alternatives (see above).
- The shop accepts a prepayment from the customer.
- The customer requests an estimate before authorizing the repairs (even if there is no face-to-face contact).

The shop must record the estimate on the repair order before starting repairs. If there is face-to-face contact, the shop must give the customer a copy of the repair order (complete with written estimate) before starting the repairs.

## **Estimated Completion Date**

Before a shop starts any repairs for which the shop has accepted a prepayment of \$250 or more, the shop must give the customer an oral or written estimate of the repair completion date, and must record the estimated completion date on the repair order.

## **Additional Authorization**

A shop may not do any of the following without getting additional authorization from the customer:

- Perform additional repairs, beyond those previously authorized.
- Exceed the shop's price estimate, or the price ceiling specified by the customer under estimate alternative 2 (see above).
- Fail to complete the repairs by the estimated completion date (see above).

To get additional authorization, the shop must do all the following:

- Contact the customer by telephone or other means.
- Describe the proposed additional repairs, if any.
- Give the customer a new price estimate if repair charges may exceed the prior estimate or ceiling.
- Give the customer a new estimated completion date if repairs will not be completed by the date previously estimated.
- Obtain the customer's authorization to proceed.
- Record the additional authorization on the repair order or invoice.

## **Returning Replaced Parts**

A shop must return replaced parts to a customer if the customer requests them before the shop starts the repairs. The shop must disclose, on the repair order, the customer's right to demand the return of replaced parts. If the shop is required to return the replaced parts to the manufacturer, the shop must permit the consumer to inspect the replaced parts.

## **Repair Invoice**

When the shop returns the motor vehicle to the customer, the shop must give the customer a written repair invoice that includes all the following:

- The name and address of the shop.
- The name and address of the customer.
- The date on which the motor vehicle was returned to the customer.
- The model, make and license number of the motor vehicle.
- The odometer reading when the vehicle was received by the shop.
- The price for the repairs.
- An itemized description of all labor, parts and merchandise supplied, including those supplied under warranty.
- Notice of any warranties that apply.
- A statement that a part is used, rebuilt or reconditioned if that is the case.
- The identity of the individual or team that performed the repair.
- A disclosure that repairs are regulated by DATCP.

## **Prohibited Practices**

- No shop may knowingly underestimate the price of repairs or the time required to complete repairs.
- No shop may misrepresent any of the following:
  - That repairs are necessary for the safety or effective operation of a motor vehicle.
  - That a motor vehicle is in a dangerous condition.
  - That failure to repair a motor vehicle will be harmful to the motor vehicle.
  - That a repair has been made.
  - The terms of any warranty or service agreement.
- No shop may refuse to return a customer's motor vehicle because the customer has failed to pay for unauthorized repairs, or has failed to pay repair charges that exceed the estimate, provided that the customer pays for authorized repairs and repair charges.

- No shop may:
  - Alter a motor vehicle with intent to create a condition requiring repairs.
  - Fail to honor a warranty or service agreement to which the shop is a party.
  - Require a customer to waive the customer's rights under ch. ATCP 132.
  - Demand or receive payment for unauthorized repairs, or for repairs that have not been performed.
  - Falsify or destroy required records.
  - Charge for giving an estimate unless the charge constitutes reasonable compensation for preliminary diagnosis needed to give the estimate, and the charge is disclosed before the shop starts the diagnostic work.

## Repair Records

A shop must keep all of the following repair records for at least 2 years:

- The repair order and invoice for each repair.
- Records identifying the personnel who worked on each repair.
- Invoices for parts, components and accessories purchased by the shop.

## ATCP 132 does *not*....

ATCP 132 does *not* do any of the following:

- Require repair shops or mechanics to be licensed or registered. But DATCP *does* register shops that repair or service mobile air conditioners (see *Section 6.4*). The Wisconsin Department of Transportation licenses motor vehicle dealers.
- Regulate repair skills, workmanship or quality.
- Regulate the price of repairs, provided that the shop complies with repair estimate and authorization requirements under the rule.

## Rule Background

DATCP adopted ATCP 132 as a *general order* (rule) under Wisconsin's Unfair Business Practices Law, Wisconsin Statutes section 100.20.

- DATCP adopted ATCP 132 in 1975 (DATCP Administrative Docket No. 1161)
- DATCP repealed and recreated ATCP 132 effective January 1, 1995 (DATCP Administrative Docket No. 2448)

## **Rule Enforcement**

### ***Private Remedy***

A person who suffers a monetary loss because of a shop's violation of ATCP 132 may sue the shop under Wisconsin Statutes section 100.20(5) and may recover twice the amount of the loss, together with costs and attorneys fees.

### ***Injunction and Restitution***

DATCP may seek a court order, under Wisconsin Statutes section 100.20(6), enjoining violations of ATCP 132 and ordering a shop to pay restitution to consumers. The Department of Justice or a district attorney may represent DATCP in court.

### ***Civil Forfeiture***

DATCP or a district attorney may start a court action, under Wisconsin Statutes section 100.26(6), to recover a civil forfeiture from a shop that violates ATCP 132. The court may impose a civil forfeiture of up to \$10,000 per violation. The Department of Justice or a district attorney may represent DATCP in court.

### ***Criminal***

A district attorney may start a criminal prosecution, under Wisconsin Statutes section 100.26(3), against a shop that violates ATCP 132. A shop may be fined up to \$5,000 or sentenced to as much as a year in jail, or both.

## **Selected Court Cases (ATCP 132)**

***Huff and Morse, Inc. v. Riordan***, 118 Wis. 2d 1 (Wis. Court of Appeals, 1984)

- Violation of ATCP 132 invalidates motor vehicle repair contract.
- A shop may not recover under an invalid contract except for the reasonable value of repair services provided ("quantum meruit"), up to the limit actually authorized by the customer. The shop must prove that the repairs were authorized. The shop must also prove, by expert testimony if necessary, the reasonable value of the repairs. The shop may recover the reasonable value of repairs actually authorized, even if the authorization was not recorded in strict compliance with ATCP 132.
- A shop may not recover for unauthorized repairs, or for repair charges that exceed the amount authorized by the customer, even if the repair charges reflect the reasonable value of the repairs.
- If the shop violates ATCP 132, and the customer's payment for authorized repairs exceeds

the reasonable (“quantum meruit”) value of those repairs, the customer may recover twice the amount of the difference as double damages under Wisconsin Statutes section 100.20(5). Stats. This method of computing damages applies to repairs that were authorized in fact, even though the authorization was not recorded in strict compliance with ATP 132.

***Jagodinski v. Jessup***, 215 Wis. 2d 240 (Wis. Court of Appeals, 1997)

- Restoration work is covered by ATP 132. The definition of “customer” includes virtually all motor vehicle owners, and does not distinguish between more sophisticated and less sophisticated customers.